Doc Code: AP.PRE.REQ

PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional) 034764-0307	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or Printed Name _____	Application Number 10/075,888	Filed February 13, 2002
	First Named Inventor Barry FALVO	
	Art Unit 2426	Examiner Fred H. Peng

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- ☒ attorney or agent of record. Registration number 36,139
- ☐ attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____

Signature

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Typed or printed name

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Telephone number

July 28, 2010
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 forms are submitted.

The Rejection Of The Claims Under 35 U.S.C. § 102

In the Final Office Action dated January 28, 2010, claims 1-25 were rejected under 35 U.S.C. § 102(b) as being anticipated by USP No. 6,018,768 to Ullman. Applicant respectfully traverses this rejection for at least the following reasons.

The present disclosure relates to a method and a system for allowing the presentation of web content associated with a channel currently displayed on a first display device (*e.g.*, a television) to be presented on an auxiliary device. In accordance with the present disclosure and the pending claims, data associated with the ***currently tuned channel number*** is provided to the auxiliary display by a set-top box (STB). ***Utilizing the current tuned channel number*** *provided by the STB,* ***the auxiliary display device determines a particular uniform resource locator (URL) associated with the current tuned channel number****; and displays the web content associated with the URL associated with the current tuned channel number on the display of the auxiliary display device.*

Thus, in accordance with each of the pending independent claims, the STB provides the ***current tuned channel*** **number** to the auxiliary device, and then the auxiliary device, ***utilizing the current tuned channel number provided by the STB***, determines a URL associated with the current tuned channel **number** and displays the associated web page on the auxiliary device.

It is asserted that Ullman discloses an auxiliary display device that determines a particular uniform resource locator (URL) associated with the current tuned channel information utilizing the current tuned channel information provided by the STB. Specifically, as the URL information itself was considered to be "channel information", it was concluded that the local computer 16 of Ullman determined the URL based on channel information. Regardless of the definition of channel information, Ullman does not disclose a device which **determines** the URL

based on channel information. As is made clear in Ullman, in each of the embodiments of Ullman, the local computer 16 receives the URL directly from a source and does not disclose determining anything based on the received channel information. There is simply no technical basis or reasoning to conclude that when information is *directly provided* to the local computer that the local computer "determined" this information. There is simply no "determination" of any type performed by Ullman with respect to the URL, as the URL is directly provided to the local computer. In contrast, the pending claims expressly recite that the auxiliary display device ***determines*** a particular uniform resource locator (URL) associated with the current tuned channel information ***utilizing* the current tuned channel number** provided by the STB.

It was asserted that the time and name of the program, which are provided to the auxiliary device in Ullman, satisfied the recitation concerning "channel information". While Applicant disagrees with this conclusion, in order to eliminate this issue, Applicant amended the independent claims to expressly recite that the "**currently tuned channel number**" is provided to the auxiliary device by the set-top box. Once again, nowhere does Ullman disclose or suggest providing the "**currently tuned channel number**" to an auxiliary device, much less **utilizing** the currently tuned channel **number** to determine the URL to be displayed.

The pending rejection also asserts that with regard to Ullman, "the time stamp associated with a particular program received would inherently include the channel information." Clearly there is no basis for this conclusion and it is incorrect. As taught by Ullman, the time stamp is associated with the web page to be displayed, which can be accessed directly by the associated URL. Thus, there is no need for the time stamp to have any channel number information. More importantly, even assuming *arguendo* that the time stamp contained channel number information, it is clearly not inherent that such channel number information would be utilized to

determine the URL to be displayed. As noted, Ullman is silent about any such operation. Thus, one of the major premises on which the current rejection is based is in error.

It is again noted that the pending claims expressly recite that the auxiliary display device ***determines*** a particular uniform resource locator (URL) associated with the current tuned channel ***number*** utilizing the current tuned channel ***number*** provided by the STB. As Ullman does not disclose or suggest providing the "currently tuned channel **number**" to an auxiliary device, it is clear that Ullman, at a minimum, fails to disclose or suggest this element of the pending independent claims, and therefore does not anticipate the pending claims.

Finally, it is noted that Ullman discloses a device which practices the precise method the present disclosure intends to avoid, i.e., putting the website information (*e.g.*, URL address) directly into the video signal associated with the program provided to the television. Specifically, Ullman discloses that the given system requires that the "[w]eb pages be sent in the vertical blanking interval (VBI) of the video signal" (*see*, Ullman, col. 3, lines 7-11). Thus, the auxiliary device receives the URL directly from a source and does not disclose determining anything based on current tuned channel number.

Furthermore, with regard to col. 3, lines 44-59 and col. 6, lines 44-48 of Ullman which discusses an alternative embodiment of Ullman in which the URLs are transmitted to users at a predetermined schedule which corresponds to the predetermined broadcasts. In this embodiment, the broadcaster will send out URLs to the users at predetermined times (e.g., daily, weekly, monthly, yearly) which correspond to the time the programs provided by the broadcaster are made available to the user. As noted by Ullman, a Link file is provided to the user via the Internet and the file contains the **time codes, URL addresses and titles** of the various programs for each Webpage the broadcaster wishes to associate with a given program. So once again, the

auxiliary device receives the URL directly from a source and does not disclose determining anything based on the current tuned channel number.

Accordingly, as is well known, anticipation under 35 U.S.C. § 102 requires that each and every element of the claim be disclosed in a prior art reference as arranged in the claim. See, *IPXL Holdings, L.L.C. v. Amazon.com, Inc.*, 430 F.3rd 1377, 1380 (Fed. Cir. June 2006). As Ullman fails to disclose or suggest at least the foregoing elements, it is clear that Ullman does not anticipate any of the pending independent claims

Under Federal Circuit guidelines, a dependent claim is nonobvious if the independent claim upon which it depends is allowable because all the limitations of the independent claim are contained in the dependent claims, *Hartness International Inc. v. Simplimatic Engineering Co.*, 819 F.2d at 1100, 1108 (Fed. Cir. 1987). Accordingly, as independent claims 1, 7, 14 and 21 are patentable for at least the reasons set forth above, it is respectfully submitted that all claims dependent thereon are also patentable.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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